

## Message Text

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ACTION ARA-10

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FM AMEMBASSY MANAGUA

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EO 11652: N/A

TAGS: BPRO, EINV, NU

SUBJECT: GAS POPULAR COMPLAINT AGAINST GON, ESSO

REF STATE 301379

1. SUMMARY. THIS TELEGRAM ATTEMPTS TO ANSWER THE QUESTIONS  
POSED IN REFTEL ON THE COMPLAINT OF THE AMERICAN-OWNED FIRM GAS  
POPULAR THAT THE GON DEVELOPMENT AGENCY INFONAC IS TAKING OVER  
THE COMPANY'S ASSETS WITHOUT COMPENSATION. END SUMMARY

2. CORE OF RALPH MOYER'S CHARGE THAT GAS POPULAR IS FACING DE FACTO  
EXPROPRIATION WITHOUT ADEQUATE COMPENSATION IS HIS CONTENTION THAT  
INFONAC HAS NOT CREDITED HIS ACCOUNT WITH THE FULL VALUE OF GAS  
DELIVERED IN THE 1974/75 SEASON TO THE INFONAC SUPPORTED TOBACCO  
DEVELOPMENT PROJECT. IF THE FULL PRICE HAD BEEN PAID, ACCORDING TO  
MOYER, THERE WOULD HAVE BEEN SUFFICIENT FUNDS TO SETTLE LOANS OWED  
PRIVATE DEVELOPMENT BANK CNI AND FINANCIAL INSTITUTION INDESA ON TERMS

OFFERED BY THESE INSTITUTIONS (IN CASE OF CNI THIS WAS ABOUT 50  
PERCENT OF ACTUAL DEBT, ACCUMULATED INTERESTS, AND PENALTIES).  
INFONAC ON ITS PART STATES THAT GAS POPULAR DID NOT JUSTIFY  
INCREASE IN COSTS FOR DELIVERY WHICH WERE BILLED ON SAME  
PERCENTAGE INCREASE AS RISE IN LIQUID GAS PRICES; INFONAC  
PAID FOR INCREASE IN GAS PRICES BUT HAS NOT ACCEPTED  
INCREASE IN DELIVERY COSTS BUT INFORMS US THAT IT IS WILLING TO  
STUDY COST DATA TO DETERMINE IF AN INCREASED PRICE IS JUSTIFIED.

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3. MOYER SAYS THAT INFONAC DID NOT OBJECT TO PRICES QUOTED AND CONTAINED ON VOUCHERS BUT CONTINUED TO COLLECT A LOWER PRICE FROM THE TOBACCO FARMERS. HE ALLEGES THIS WAS BECAUSE INFONAC WAS AFRAID TO CHARGE THE HIGHER PRICE AS PRESIDENT SOMOZA IS ONE OF THE LARGEST GROWERS. MOYER INCLUDED THIS ALLEGATION IN A TELEGRAM HE SENT SOMOZA IN LATE OCTOBER.

4. THERE ARE SEVERAL CHARGES AND COUNTERCHARGES BEFORE THE NICARAGUAN COURTS BUT THE BASIC FACT IS THAT GAS POPULAR'S EQUIPMENT HAS BEEN TAKEN OVER AND ADMINISTERED BY CREDITORS AND IS BEING USED TO DELIVER GAS TO BHE TOBACCO CURING SHEDS. THIS, MOYER SAYS, IS ILLEGAL BUT IT IS NOT CLEAR WHETHER HE HAS TRIED THROUGH THE COURTS TO OBTAIN AN INJUNCTION AGAINST ITS USE. IT IS VERY DIFFICULT TO PIN MOYER DOWN AS TO EXACTLY WHAT IS THE CURRENT LEGAL SITUATION AND IT SEEMS THAT AT LEAST IN SOME INSTANCES HE IS TRYING TO ACT AS HIS OWN LAWYER. A COMPLICATION WHICH HE REPORTS CONSTANTLY AS AT A POINT OF SETTLEMENT IN HIS FAVOR IS A GOVERNMENT TAX CLAIM AGAINST HIS COMPANY.

5. THE EMBASSY ECONOMIC OFFICER HAS DISCUSSED THIS CASE ON SEVERAL OCCASIONS WITH INFONAC PRESIDENT DONALD SPENCER, CNI MANAGER FRANK ROBLETO, AND ESSO MANAGER DANILO LACAYO. ON DECEMBER 18 THE AMBASSADOR MET WITH ROBLETO AND AN INFONAC LAWYER TO DETERMINE THEIR POSITIONS. THESE INSTITUTIONS DENY ANY INTENT TO FORCE GAS POPULAR INTO BANKRUPTCY. CNI POINTS OUT THAT IT IS UNDER INSTRUCTIONS FROM AID AND OTHER CREDITORS TO CLEAN UP ITS LOAN PORTFOLIO AND THAT IT HAS TAKEN SIMILAR ACTIONS AGAINST OTHER LONG UNPAID LOAN ACCOUNTS. INFONAC CLAIMS IT HAD TO MOVE TO PROTECT ITS COLLATERAL AND TO ENSURE GAS DELIVERIES FOR THE PRESENT TOBACCO CROP. BOTH STATE THAT IF GAS POPULAR WOULD PRESENT PROPERLY AUDITED ACCOUNTS AND A MANAGEMENT PLAN WHICH WOULD GIVE SOME HOPE FOR A PROFITABLE FUTURE, THEY WOULD BE WILLING REFINANCE THE COMPANY'S DEBTS. THEY PROMISED TO PUT THIS OFFER IN WRITING.

6. THE AMBASSADOR AND THE EMBASSY ECONOMIC OFFICER ALSO MET WITH MOYER ON DECEMBER 23 IN A FURTHER EFFORT TO CLARIFY THE CONTENDING CLAIMS AND INSURE REASONABLE AND FAIR TREATMENT OF GAS POPULAR. WHEN INFORMED OF CNI AND INFONAC LIMITED OFFICIAL USE

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CONDITIONAL OFFER TO REFINANCE GAS POPULAR'S DEBTS, MOYER APPEARED DOUBTFUL BUT SAID HE WOULD STUDY ANY OFFER. HE SEEMS TO BELIEVE THERE IS A DELIBERATE PLOT TO DESTROY GAS POPULAR AND THAT THE ONLY JUST SOLUTION IS TO RETURN HIS EQUIPMENT, ACCEPT HIS PRICE FOR GAS, AND RESTRUCTURE HIS DEBTS.

7. WE HAVE ASKED MOYER FOR COPIES OF GAS POPULAR'S FINANCIAL STATEMENTS AND LETTERS WHICH HE STATES COMMITS INFONAC TO

ARRANGE SETTLEMENT OF THE DEBTS WITH CNI AND INDESA.

8. WHILE EMBASSY NOT COMPETENT TO DETERMINE LEGAL RIGHTS OF PARTIES IN THE DISPUTE WE CAN CONTINUE TO USE OUR GOOD OFFICES TO ENCOURAGE A SETTLEMENT ACCEPTABLE TO ALL PARTIES. WE BELIEVE THAT BY OUR SHOW OF INTEREST IN THE CASE, IT IS UNLIKELY THAT THE CREDITORS WILL FORCE A LIQUIDATION WITHOUT PRIOR CONSULTATION WITH US.

9. MOYER, WHO HAS AN EXCELLENT REPUTATION WITH THE AMERICAN BUSINESS COMMUNITY HERE, HAS A NUMBER OF OTHER ALLEGATIONS ABOUT ILLEGAL AND COLLUSIVE ACTIONS OF UDGES, EFFORTS BY LOCAL GAS SUPPLIERS (BOTH AMERICAN-OWNED) TO FORCE HIM OUT OF BUSINESS, AND FAILURES OF INFONAC IN MANY PAST YEARS TO MEET ITS COMMITMENTS WITH GAS POPULAR. ON THE OTHER HAND, GAS POPULAR BORROWED HEAVILY FOR CAPITAL EQUIPMENT FOR THE TOBACCO PROJECT, FAILED TO MEET ITS FINANCIAL COMMITMENTS, HAS STEDILY LOST ITS NON-TOBACCO GAS BUSINESS OVER THE YEARS, AND IS ALLEGED BY ITS CREDITORS TO BE BADLY MANAGED.

10. IF MOYER'S BASIC CONTENTION IS TRUE THAT AN ILLEGAL PROCESS IS UNDERWAY WITH THE INTENT OF DEPRIVING HIM OF HIS PROPERTY WITHOUT COMPENSATION, THE EMBASSY'S CONTINUED INTEREST IN THE CASE MAY BE SUFFICIENT TO ENSURE FAIR PLAY. IF THE CONTENTION OF THE CREDITORS IS TRUE, THAT GAS POPULAR'S NET ASSETS MAY BE BELOW ITS LIABILITIES DUE TO POOR BUSINESS JUDGMENT AND BAD MANAGEMENT, OUR EFFORTS TO ASSIST THE COMPANY ARE PROBABLY IN VAIN. HOPEFULLY, THE INFORMATION WE HAVE ASKED FOR WILL HELP US UNDERSTAND THIS COMPLICATED PROBLEM AT LEAST A LITTLE BETTER.

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